

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1384 be amended to read as follows:

- 1 Page 4, line 28, after "facility," insert "**an**".
- 2 Page 4, line 28, after "insurer," insert "**a**".
- 3 Page 4, line 28, after "entity," insert "**an**".
- 4 Page 4, line 28, after "employer," insert "**a**".
- 5 Page 4, line 29, after "agency," insert "**a**".
- 6 Page 4, line 29, after "department," insert "**an**".
- 7 Page 6, between lines 41 and 42, begin a new paragraph and insert:
- 8 "SECTION 7. IC 35-41-1-5.5 IS ADDED TO THE INDIANA
- 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2007]: **Sec. 5.5. "Credit restricted felon"**
- 11 **means a person who:**
- 12 **(1) has been convicted of:**
- 13 **(A) murder (IC 35-42-1-1);**
- 14 **(B) voluntary manslaughter (IC 35-42-1-3);**
- 15 **(C) aggravated battery (IC 35-42-2-1.5);**
- 16 **(D) robbery (IC 35-42-5-1);**
- 17 **(E) carjacking (IC 35-42-5-2);**
- 18 **(F) arson as a Class A felony (IC 35-43-1-1);**
- 19 **(G) possession, manufacture, placing, dissemination, or**
- 20 **detonation of a weapon of mass destruction with the intent**
- 21 **to carry out terrorism (IC 35-47-12-1);**
- 22 **(H) conspiracy or an attempt to commit an offense**
- 23 **described in clauses (A) through (G); or**
- 24 **(I) a felony offense in another jurisdiction that is**

1 **substantially similar to an offense described in clauses (A)**
 2 **through (G); or**

3 **(2) is a sex offender (as defined in IC 11-8-8-5).".**

4 Page 7, after line 40, begin a new paragraph and insert:

5 "SECTION 12. IC 35-50-6-3 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A person
 7 assigned to Class I earns one (1) day of credit time for each day ~~he~~ **the**
 8 **person** is imprisoned for a crime or confined awaiting trial or
 9 sentencing.

10 (b) A person assigned to Class II earns one (1) day of credit time for
 11 every two (2) days ~~he~~ **the person** is imprisoned for a crime or confined
 12 awaiting trial or sentencing.

13 (c) A person assigned to Class III earns no credit time.

14 **(d) A person assigned to Class IV earns one (1) day of credit for**
 15 **every six (6) days the person is imprisoned for a crime or confined**
 16 **awaiting trial or sentencing.**

17 SECTION 13. IC 35-50-6-4 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) A person **who is**
 19 **not a credit restricted felon and who is** imprisoned for a crime or
 20 imprisoned awaiting trial or sentencing is initially assigned to Class I.

21 **(b) A person who is a credit restricted felon and who is**
 22 **imprisoned for a crime or imprisoned awaiting trial or sentencing**
 23 **is initially assigned to Class IV. A credit restricted felon may not**
 24 **be assigned to Class I or Class II.**

25 ~~(b)~~ **(c) A person who is not assigned to Class IV** may be reassigned
 26 to Class II or Class III if ~~he~~ **the person** violates any of the following:

27 (1) A rule of the department of correction.

28 (2) A rule of the penal facility in which ~~he~~ **the person** is
 29 imprisoned.

30 (3) A rule or condition of a community transition program.

31 However, a violation of a condition of parole or probation may not be
 32 the basis for reassignment. Before a person may be reassigned to a
 33 lower credit time class, ~~he~~ **the person** must be granted a hearing to
 34 determine ~~his~~ **the person's** guilt or innocence and, if found guilty,
 35 whether reassignment is an appropriate disciplinary action for the
 36 violation. The person may waive ~~his~~ **the** right to the hearing.

37 **(d) A person who is assigned to Class IV may be reassigned to**
 38 **Class III if the person violates any of the following:**

39 (1) A rule of the department of correction.

40 (2) A rule of the penal facility in which the person is
 41 imprisoned.

42 (3) A rule or condition of a community transition program.

43 However, a violation of a condition of parole or probation may not
 44 be the basis for reassignment. Before a person may be reassigned
 45 to Class III, the person must be granted a hearing to determine the
 46 person's guilt or innocence and, if found guilty, whether

1 **reassignment is an appropriate disciplinary action for the**
 2 **violation. The person may waive the right to the hearing.**

3 ~~(c)~~ **(e)** In connection with the hearing granted under subsection ~~(b)~~;
 4 **(c) or (d)**, the person is entitled to:

- 5 (1) have not less than twenty-four (24) hours advance written
- 6 notice of the date, time, and place of the hearing, and of the
- 7 alleged misconduct and the rule the misconduct is alleged to have
- 8 violated;
- 9 (2) have reasonable time to prepare for the hearing;
- 10 (3) have an impartial decision maker;
- 11 (4) appear and speak in ~~his~~ **the person's** own behalf;
- 12 (5) call witnesses and present evidence;
- 13 (6) confront and cross-examine each witness, unless the hearing
- 14 authority finds that to do so would subject a witness to a
- 15 substantial risk of harm;
- 16 (7) have the assistance of a lay advocate (the department may
- 17 require that the advocate be an employee of, or a fellow prisoner
- 18 in, the same facility or program);
- 19 (8) have a written statement of the findings of fact, the evidence
- 20 relied upon, and the reasons for the action taken;
- 21 (9) have immunity if ~~his~~ **the person's** testimony or any evidence
- 22 derived from ~~his~~ **the person's** testimony is used in any criminal
- 23 proceedings; and
- 24 (10) have ~~his~~ **the person's** record expunged of any reference to
- 25 the charge if ~~he~~ **the person** is found not guilty or if a finding of
- 26 guilt is later overturned.

27 Any finding of guilt must be supported by a preponderance of the
 28 evidence presented at the hearing.

29 ~~(d)~~ **(f)** A person may be reassigned from Class III to Class I, ~~or~~ Class
 30 II, **or Class IV**, or from Class II to Class I. A person's assignment to
 31 Class III or Class II shall be reviewed at least once every six (6) months
 32 to determine if ~~he~~ **the person** should be reassigned to a higher credit
 33 time class. **A credit restricted felon may not be reassigned to Class**
 34 **I or Class II.**

35 SECTION 14. IC 35-50-6-5, AS AMENDED BY P.L.173-2006,
 36 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2007]: Sec. 5. (a) A person may, with respect to the same
 38 transaction, be deprived of any part of the credit time the person has
 39 earned for any of the following:

- 40 (1) A violation of one (1) or more rules of the department of
- 41 correction.
- 42 (2) If the person is not committed to the department, a violation
- 43 of one (1) or more rules of the penal facility in which the person
- 44 is imprisoned.
- 45 (3) A violation of one (1) or more rules or conditions of a
- 46 community transition program.

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, ~~he the person~~ may also be reassigned to Class II **(if the person is not a credit restricted felon)** or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in ~~section 4(c)~~ **section 4(e)** of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored.

SECTION 15. [EFFECTIVE JULY 1, 2007] IC 35-41-1-5.5, as added by this act, and IC 35-50-6-3, IC 35-50-6-4, and IC 35-50-6-5, all as amended by this act, apply only to persons convicted after June 30, 2007."

Renumber all SECTIONS consecutively.

(Reference is to HB 1384 as printed February 14, 2007.)

Representative Harris T